

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, September 10, 2018, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Bill Byers; Guy Gentry, President; David Hachmeister; Bob Johnson; Amanda Mosiman; Doris Horn; and Jeff Willis.

Also present were Morrie Doll, Attorney; Sherri Barnhill, Executive Director; and Molly Barnhill, Assistant Director.

MINUTES: Upon a motion by Bob Johnson and seconded by Doris Horn the Minutes from the regular meeting held August 13, 2018 were approved as circulated.

The President explained the rules of procedure. He stated the rezonings will go to the Commissioners for final approval on October 8, 2018.

PC-R-18-13 – Petition of Chris A. & Kara J. Combs by Chris A. & Kara J. Combs, Owners to rezone 4.74 acres located on the NE corner of the intersection of Fisherville Rd. and Asbury-Cemetery Rd. Approximately 0' E of the intersection formed by Fisherville Rd. and Asbury-Cemetery Rd. Being part of Parcel B in Combs-Fisherville Road Minor Sub. From an "A" Agricultural to "C-3" Highway Commercial Zoning District with a Use and Development Commitment. Campbell Twp. 9366 Fisherville Rd. Complete legal on file. Advertised in the Standard August 30, 2018.

Chris Combs was present.

The President called for a staff report.

Mrs. Rector stated we have received 14 green cards back from the notice to adjacent properties. She said we are missing 3 green cards but we do have the white pay receipts and they were mailed correctly. She said he'll just need to bring those 3 green cards in when he gets them. She said there is no minimum lot size for C-3 and the Comprehensive Plan has no projection for this area. She said the existing land use is a tree farm. She stated all of the surrounding property is zoned agricultural with single family dwellings and vacant fields. She said they have submitted a Use & Development Commitment limiting the real estate to a landscape business, greenhouse and/or nursery and other uses comparable and compatible to those set forth in this section and a contractor shop and office. She added that there is no flood plain and they have access to

Fisherville Road and Asbury Cemetery Road. Mrs. Rector said the stated use is a landscape business greenhouse and/or nursery and Contractor shop/office which would be allowed. She said Mr. Combs came into the office on August 2nd of this year to obtain a permit for an addition to the accessory building. She said on that permit he certified that the proposed building was for agriculture purposes and would not be used commercially nor would it have any utilities. She said he then asked what it would take to have an office and move Combs Landscaping business out to this property. She said he was informed that would take a C-3 zoning and that is the reason he filed this petition.

The President asked if Mr. Combs had anything to add to the staff report.

Mr. Combs said he did go up there and have that discussion with Sherri but he had not gotten with his council to review, because they have been there since 1998 as an ongoing nursery, growing trees and growing plants so after getting with his council and reviewing everything there basically everything that he is doing out there does not require, according to council, it to be zoned to commercial and we don't want it to commercial. He said he has their regulations and everything here and the only thing that is different is that Sherri asked him about his home building company, he owns CAC Custom Homes, and Combs Landscaping basically are in the same so he well he was trying to do everything right and from what he understood. He said that company is based at 1422 North Stockwell Road, which is where everything is, it's called CAC Development, which it can stay there if that's the issue from the standpoint of forcing him to rezone but as far as continuing to grow plants, his storage bins, greenhouses, all of that fall under agricultural. He said so what he wants to do today as far as continuing on with the rezoning, he doesn't want to zone this property, never wanted to zone this property commercial and if you go through, again according to his council and reading all of the regulations, everything he is wanting to do falls under the agricultural where he currently is and has been operating for 20 years since 1998. He said so if the issue is....there's been all these stories that he is going to put a chemical building out there; his plastics company, they just bought a new building out in Vanderburgh Industrial Park so there's no truth to that. He said they moved that facility out there which was never on this site or anything but just all the different things that were said. He said Attorney Lee Ship is here, his Attorney could not be here today so he is representing himself because he had a City Council meeting in Evansville. He said so basically he doesn't want this rezoning. He wants to keep it agricultural, which is consistent with what is out there. He's been there before a single house was out there in 1998. He said he's been growing his trees, he's been adding green houses, he did add his building within the rights of his agricultural. He said it states it can have an office in there. He said he is just reading through their regs and everything of what's there. He said he can house his materials there, all under agricultural. He said he is growing his plants there, he can hold his mulch there, all those types of things. He said we are not having a retail facility on this site. He said he is retiring from that and he is done with that after 35 years. He said it's been on the news media and everything. He said they are selling their facility on Burkhardt Road, something totally different is going in there, the whole thing is going to get dozed down so that is what he was trying to portray to Sherri but in all the things...he does work for himself, he still has employees that do his homes and subdivisions. He said but from the standpoint of going out and doing a commercial operation that is not what they are going to be doing and that's not what they will be in the future; he is retiring from that. He

said he doesn't know if he didn't do a good job with Sherri with that and obviously with the construction company everybody started thinking he was going to bring bulldozers, all that type of stuff out there; that was not the intention either. He said he has tractors, skid steers, all the stuff they use to dig their trees; all that type of stuff so he is here before them today...he could go on but all of their reg.s are right here. He said he is looking at them all highlighted by his attorney and he falls within that in his belief and he doesn't want the zoning and he never wanted it from day one. He said his own parents, his father passed away January 25th but his mom still lives on the property. He said he has no desire to put the commercial zoning out there.

The President said Chris, let me stop you there just a minute and ask our council.

Attorney Doll said well the application that Chris filed says proposed land use and the first list is landscape business and under the Warrick County Comprehensive Zoning Ordinance, a landscaping business is a permitted use only in a C-3. He said it is item 11A under the C-3 ordinance. He said greenhouse and nursery is also described in C-3 and green houses and a plant nursery are permitted in an agricultural but a contractor shop and office building is not permitted in an agricultural but it would be permitted in a C-3. He said so two out the three listed items fall clearly in a C-3 district definition.

Mr. Combs said so working for myself on my projects on my houses and everything...he doesn't understand if he is holding material for his housing, his projects, then he is not going out there and soliciting other peoples work. He said he doesn't understand how that doesn't fall under his own nursery which he's been doing there for 20 years.

Attorney Doll said all we can go with is the language he used on the application and you've described it as a landscape business. He said the common meaning of that phrase would be a landscaping company that would be available for hire by others.

The President said so the Boards interpretation of what he is saying he is doing is what we need to resolve.

Attorney Doll said or if there is a motion to down zone the application pursuant to our rules.

Mr. Combs said we are trying to make this go away.

Mrs. Rector said when Mr. Combs asked her, everyone in the office was in there, it was to move Combs Landscaping business out there, it wasn't to build a greenhouse, it wasn't to put his plants, it was to move the landscaping business there so that is what she went by and looked it up and told him C-3. She said she only went by what he said...

Mr. Combs said we had that discussion but the difference is, and exactly what he said is he is going to be doing his work; he's not trying to put Sherri on the spot.

Mrs. Rector said you're not.

Mr. Combs said what he is trying to say when he stood there in front of her is that last thing he wants to do is rezone this. He said that is why he asked those questions but he should have gone to his council

before he did anything and had him pull it all up before they filed it but they tried to hurry to get it done and that was a mistake on his end.

Mrs. Rector said we also should have had a site review with the Commercial Site Review and went over all of it before he filed it but the next thing she knew he was filing it and they only take what they file and their understanding of what they are doing.

Mr. Combs said he would be open to downgrading.

Mrs. Rector said she doesn't understand what they mean by downgrading.

Attorney Doll said they can ask for a lesser zoning district by motion at the public hearing. He said that is what they've all been dealing with a certain convenient store property on the east side of Newburgh, which was brought in as a C-4 and on a motion made by the applicant was downgraded to a C-1, which you can do.

Mrs. Rector said well what would you down grade it to when it's listed as a C-3.

The President said what he got from their conversation was can he use his own stuff there for the houses that he is building, if he's not selling to other people, and leave it as agricultural; is that able to be done?

Attorney Doll said that deals with the greenhouse clearly, and that could be done.

Mrs. Rector said she thinks he could do that in an agricultural as long as he doesn't have retail and customers coming in; it's just strictly his plants for his use.

Mr. Combs said that is exactly right, there are no customers what-so-ever.

Attorney Doll said the other question is the shop and the contractors office.

Mr. Combs said that is going to remain at 1422 North Stockwell and the only reason that came up was because when Sherri and himself....and he's up there all the time pulling permits, he said his office is the same, his office is his truck basically, but still there was never any intention of bringing out heavy industrial equipment and seeing a Skanska sitting out there in the middle of the residential. He said all of the equipment they use for the agricultural; mini excavator, skid steer, they dig their trees, all that stuff is their normal equipment they use everyday on the farm.

The President asked if it was out there presently.

Mr. Combs said absolutely. He said it is out there weekly. He said traffic wise; a concern was....we are less intrusive than the farmers running up and down with the combines and tractors. He said he doesn't have anything like that; he has a 40 hp tractor is the biggest tractor he has.

Mrs. Rector said we never discussed a shop when he was in the office; that came up with the application.

Mr. Combs said that is when Scott called him and said what about the shop thing and he said the homebuilding, that office being the same as what he is doing.

Mrs. Rector said so at this time you are wanting to say that you are not going to have any retail, not going to have any business, you just want to put up a greenhouse for your own plants to use at your own houses, you do not want an office in there...

Mr. Combs said no I do want an office in there and a bathroom.

Mrs. Rector said then you are going to have to go to commercial.

Mr. Combs said you can have that under the agricultural. He said he can have an office in there.

Mary Lee Schiff approached the podium. She said she is one of the landowners out there but also from the same law firm as Chris's attorney. She said she thinks what is happening here is that we are getting caught up in semantics with what is going on. She said with respect to the agricultural district; if she is a farmer she can have accessory buildings and in those buildings she can have a bathroom, an office, everything that she needs to use to operate that farm.

Attorney Doll said for general agricultural farming purposes.

Mrs. Schiff said right, that is all he is talking about so when he comes up and says hey im going to have an office there, he is going to have an office, an accessory building, that is an accessory to the main purpose to the greenhouses, the plant nursery, the storage bins. She said everything that he wants to do falls directly under agriculture and she doesn't understand why he is getting the pushback that oh no you can't do that.

Attorney Doll said well because the application says contractors shop and office, it doesn't say agricultural shop and office; it does not say greenhouse shop and office. He said all we can go by is the sworn to, well signed application and the application says landscape business, greenhouse and/or nursery, and contractor shop and building. He said he doesn't understand why everybody is surprised that they would take that as a commercial business enterprise.

Mrs. Schiff said she is not surprised at all. She said what Mr. Combs said up here, and she doesn't know that they understood; withdraw that petition.

The President said he understood that but before they do that they want to be sure they understand what he is doing and that it would fit in an "A" because what one attorney says another might not and this is the one we've got to listen to and that is the reason he is questioning this a little more. He said he is not trying to make it combative, he is trying to make sure they are all on the same page.

Mrs. Schiff said she agrees, he does not want to walk out of here not knowing what is going on. She said so if he wants a land use improvement permit, he may say he want's a permit because he is going to put a bathroom and office in his ancillary farm building; he should be able to do that.

Attorney Doll said as long as it's related to the farming enterprise and not the homebuilding.

Mrs. Schiff said exactly, the homebuilding is staying in Evansville. She said as long as it's related to the trees, the greenhouses, all that kind of stuff that is all it's going to be.

Attorney Doll said and as long as it's not a commercial sales or business location. He said that is not what we are talking about here. He said we are talking about a greenhouse and a nursery with an ancillary office and bathroom for employees that work there.

Mr. Combs said that is exactly right.

Mrs. Rector asked about the employees working there.

Attorney Doll said we have an understanding, that's what has been represented today that is what is being asked for.

Jeff Willis asked if site review meeting would help at this point.

Mrs. Rector said he is not going to say anything different than what has been said tonight.

Attorney Doll said so let's say it again for the record. He said what he is proposing to do is to withdraw his C-3 application and make a pledge to the APC that the property would continue to be used as it currently is, as a greenhouse and nursery, and at most an ancillary, or what we call in our statute on page 69 subsection 2, an accessory building, would be constructed at most, which contains an office and a bathroom facility for the employees that are working at that site.

Mary said correct.

Attorney Doll said where they have no commercial, public sale, business transaction there.

Mary said correct and understand that the greenhouses aren't there yet; you know that right?

Attorney Doll said he hasn't been there, he just knew it was a tree farm.

Mr. Combs said well the buildings are there but they are adding three greenhouses.

Attorney Doll said there is a subsection 5 under General Ag. District that permits greenhouses and plant nurseries but the C-3 use of greenhouses is the commercial sales. He said for example if you go to Colonial's facility in Warrick County, that would be in the C-3 because you can walk through their greenhouses as customers and buy things from them at that location; that is not what we are talking about permitting here.

Mr. Combs said that is correct.

Mrs. Rector said then she agrees that it would be covered with the agricultural zoning.

The President asked for remonstrators for or against now that we know what we are here for. He said we are actually here now to withdraw the petition for rezoning.

Laura Fraiser approached the podium. She said on behalf of the neighborhood they are against rezoning to commercial in any shape or form. She said she has a petition with 440 signatures.

Bob Johnson said we are now withdrawing that rezoning.

Attorney Doll said so you would be in favor of leaving it agricultural. He said you've heard of what the intended use is and to your knowledge your folks would be in favor of that.

Mrs. Fraiser said she thinks people have to speak for themselves so she'll leave it to them to answer that but she understands that it is agricultural and from her perspective she knows people have to use their land in the way they see fit under the rules of agricultural use.

John Dill approached the podium. He said he lives at 9866 Fisherville Road. He said he's been there since 2002. He said Mr. Combs is right, he has a tree farm but they haven't seen it in operation for over 2 years. He said what is odd to him....he worries about the children in the neighborhood. He said they've been there when there was nobody out there. He said now they have young families with children playing the streets having a good ol' time in a quiet area. He said he is not against anybody wanting to better themselves or run a business but Mr. Combs has a landscape company on Burkhart and Lynch that he's been trying to sell but his tree farm hasn't been doing nothing. He said you all said he put his application in on August 11th, well August the 16th is when he put the 6 by 10 inch sign saying he was going to have it rezoned after he done started doing his building, that has been emptied and they've been having parties out there for the last year. He said they are talking about a building that was a 60 by 40 that went to a 100 or something. He said it's his land he can do what he wants but the business part he is a little bit concerned with because he said it's not going to be to sell to the public, well it's a tree farm and every fall he has a big tree sale out there that brings in lots of traffic. He said well he hasn't had that for a few years. He said how do we know that he is not going to do that again and have a big sale that's going to bring in lots of traffic on roads that aren't made to have a lot of traffic on. He said he made a remark about the farmers, well when you sell the land the farmers go away. He said they do damage to the roads but our representatives made the law where they don't have to pay for the damage, taxpayers do which comes through the gas tax. He said whatever happens just think of one thing; what if. He said what if he has a worker that doesn't think about what he is doing and he comes down Fisherville instead of Asbury Cemetery off of Boonville-New Harmony, comes flying through and hits one of those little kids. He said as a safety man at Alcoa for 30 years he always asks what if. He said so think of the people that are there, think of the young children running around in the streets, that are having fun enjoying a quiet life, and if you are going to pass something like this how about think about fixing our roads too because that will cause more traffic.

Michael Clark approached the podium. He said he lives on Fisherville Road. He said from what he hears Mr. Combs wants to withdraw his C-3 application. He said he thinks with what was said he doesn't see a problem.

Steve Mitchell approached the podium. He stated he is lot 18 across the street there. He asked how big the greenhouses were going to be and which direction will they go.

The President said to make sure he addresses his questions to the Board and they will have Mr. Combs answer them.

Steve Mitchell said Mr. Combs has a lot of acreage there and his mom and dad's house was on the back of the property and this is on the corner of Asbury and Fisherville and he could have put it somewhere in the back but why would he care, but he's got it right on the front of the road so when they look out their front living room window all they are going to see is the barn and greenhouse. He said it's big, not what he would call a residential thing. He said he's okay with a tree farm but he's not okay with a bunch of workers coming in and out of there moving equipment. He said he doesn't want to be here this time next year trying to change it to something else. He said we have I-69 right there and people are looking for places off the roads to build. He said we have some beautiful property for Walmart to put a distribution center. He said go to Hopkinsville Kentucky and look to the right, there's about 50 acres with a Walmart Distribution center and it probably falls in a C-3.

The President said and again we do have a motion to withdraw.

Lydia Parr approached the podium. She said she lives on Zoar Church Road and just has a question as to why it has to be so big if it's just for a building business. She said that seem pretty expensive to run all of

that to pick out plants for homes so why does it have to be so big. She said another thing is they said they won't have anybody coming and buying there but aren't the homeowners going to be coming out to pick out their own plants? She said that is what they did when they bought a house. She said her main concern is why is this so big. She said she doesn't understand why they have to have 100' building if all you are doing is going out and digging up plants or taking a truck full of shrubs out. She said what is the long range plan here. She said he said he's retiring from that but it seems to her they are building an awfully big operation here to be retiring from that. She said people in businesses don't usually operate year to year, they operate with a 5, 10, 15 year business plan. She said so what is his plan.

Janet Simmons approached the podium. She said she lives on Heim Road and her question is he says he's not going to be selling retail but he's still going to have a product that a contractor is going to be coming to get, right if he is a contracting business.

The President said his business, CAC.

Janet Simmons said what about his workers coming there and taking mulch and plants to people's homes because that will be a huge influx of traffic like the other people have said.

The President said they will let him respond but it's his understanding it's just to the homes that he is building.

Janet Simmons said she knows but if you go to Gasoline Alley in the morning there will be 3 or 4 Combs Landscaping trucks filling up. She said are those trucks going to be coming down Stevenson Station, down Heim, down Asbury, and then back again all day long because Heim Road has so much traffic right now as it is and Asbury is getting ready to fill up now if that's the case. She said she doesn't know what his intentions are with that part and that is really her question and concern.

Kathy Boyd approached the podium. She said she lives on Fisherville Road and she bought her property in 1998 and built her house in 2000. She said she moved out there to get away from commercial development and she understands he is taking back that C-3. She said she does have some concerns about how large that building is and what happens next when Chris decides to retire with that land and somebody else comes in and the Commission, maybe not this one but another Commission would allow for it to get bumped up to that C rating and the building is huge; the property is large; you could easily accommodate a parking lot and light poles and there's another huge amount of property that he owns. She said where does it stop. She said they have a large amount of developers that own a huge amount of land so for those of us who have spent our life savings so we could have our homes out there so we could have a residential place. She said another thing that concerns her is the traffic and when they are going to be out there. She said not so much coming out but moving in excavators, and skid steers or tractors at 6:00 in the morning and Saturday. She said in case you haven't been out to blue grass we can talk literally 3-4 houses away, and we have very large lots, because we have no wind break so we have no sound barrier out there. She said so any noise that is happening, whether it's happening across the street from her house will come in and echo off her house. She said so something to ask Chris is the hours of operation and that coincides with his business, she still sees a business transaction happening here and she's concerned about the future and what is going to happen with this land and the huge building. She said it is daunting compared to their homes that are out there.

The President asked Mr. Combs to respond to some of the questions. He asked if he knew what the hours of operation typically. He asked Mr. Combs to come back to the podium.

Mr. Combs said typically from 7-5. He said there are times when we are planting trees or doing excavating trees out with our tree planter and if the weather is right we may go past that but there's no absolute set time.

The President asked how many workers he had and if there was a distinction between the homebuilding and the landscaping employees.

Mr. Combs said they do both and there is 8. He said their traffic count is no more than the farmers running up and down the road.

The President said he knows he has advertised, someone brought that up, about the fall tree sale before.

Mr. Combs said that is at the nursery itself at Burkhardt and Lynch Road, not out there.

The President said so you don't intend to do that.

Mr. Combs said no.

The President asked how big is the barn that everybody is talking about.

Mr. Combs said it is 200 feet long, 60 feet wide.

Amanda Mosiman said she has a statement to make. She said as the ag. agent in this county and as acting as an ag. enterprise business, every farm in this county acts as an ag. enterprise business; and yes they have big shops, they have equipment and they have workers; they put traffic...but we aren't in here talking about everybody's ag business or every farm in this county. She said as an ag. zoning, and that is an ag. business, a tree farm, landscape/greenhouse is an ag. business, we don't get to make comments about every other farm enterprise in this county and Chris is here, the commercial has been pulled back. She said it is outside the purview of this Board and him, as a business owner, to have to answer those questions. She said if he wants to talk to neighbors then they can do that but it is not under this Board's purview at all.

The President asked for any other questions from the Board. He stated we have a motion on the floor to withdraw the C-3.

Bob Johnson said he'll make that motion. Doris Horn seconded the motion and it was unanimously carried.

The President stated the application has been withdrawn and it will remain agricultural.

ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE:

AN ORDINANCE TO AMEND ARTICLE VI FLOOD HAZARD PROTECTION OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA.

The purpose of this ordinance is to adopt new FEMA rules and regulations.

Mrs. Rector said Molly said she sent them to you with the changes highlighted. She said Morrie and her sat down and they have to abide by the DNR, they regulate the FEMA flood plain regulations. She said they come down and audit us, they tell you when you need to update your ordinance, so you have no choice to do it or you will be kicked out of the flood insurance program so no one would have any flood insurance in the county if we do not participate. She said they told us we needed to update ours again and basically they tell you what you have to say and what you have to put in it. She said Morrie and herself have gone over some things, some of them they agreed to that we had choices of doing, some of it they did not and said would not pass our ordinance. She said so Molly and herself went over the DNR suggestions and these are just the changes. She said they are really nothing much more than what we have presently, we just have to update it. She said they want it done immediately because we have been putting it off for so long and then we have to send it to the Commissioners who have the final say and then we send it to the 3 towns who participate for them to adopt it.

The President said it was sent out and hopefully everybody had a chance to review, so he would entertain a motion.

Bill Byers made a motion to approve the amended ordinance. The motion was seconded by Amanda Mosiman and unanimously carried.

OTHER BUSINESS: none

ATTORNEY BUSINESS: none

EXECUTIVE DIRECTOR BUSINESS: None

Bob Johnson made a motion to adjourn the meeting. The meeting was seconded by Amanda Mosiman and the meeting adjourned at 6:41 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director